



Federal Communications Commission  
Washington, D.C. 20554

May 27, 2010

**DA 10-956**

City of Danville  
PO Box 3300  
Danville, VA 24543  
ATTN Radio Communications Manager

Dear Sir/Madam:

On March 12, 2010, the City of Danville (Danville) filed renewal applications for Microwave Industrial/Business Pool Stations WNTW867, WNTW868, and WNTW869 (the Stations).<sup>1</sup> Danville requests that we waive Section 1.949(a) of the Commission's Rules to allow its applications to be accepted even though they were filed late.<sup>2</sup> For the reasons stated below, we deny Danville's Waiver Requests and dismiss its Renewal Applications.

On January 7, 2000, the Wireless Telecommunications Bureau (Bureau) granted Danville's applications to renew licenses for the Stations.<sup>3</sup> The licenses expired on February 8, 2010.<sup>4</sup> On November 16, 2009, the Bureau sent renewal reminder notices to Danville.<sup>5</sup> On March 12, 2010, Danville filed the Renewal Applications, together with a request for waiver of Section 1.949(a) of the Commission's Rules, which requires licensees to file renewal applications no later than the expiration date of the license.<sup>6</sup>

In its Waiver Requests, Danville explains that Danville noticed its licenses had expired during an examination of its records.<sup>7</sup> It asked its consultant to file renewal applications as soon as it determined that the licenses had expired.<sup>8</sup>

The Commission's policy regarding reinstatement procedures in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.<sup>9</sup> Applicants who file

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<sup>1</sup> File Nos. 0004159562, 0004159563, and 0004159564 (filed Mar. 12, 2010) (Renewal Applications).

<sup>2</sup> Renewal Applications, Waiver Request (Waiver Requests).

<sup>3</sup> File Nos. 0000066507, 0000066508, 0000066509 (granted Jan. 7, 2000).

<sup>4</sup> *Id.*

<sup>5</sup> Renewal Reminder Notices, Ref. Nos. 4922199, 4922200, 4922201 (Nov. 16, 2009). The reminders were sent to Danville, City of, Attn: Electric Dept., P.O. Box 3300, Danville, VA 24543.

<sup>6</sup> See 47 C.F.R. § 1.949(a).

<sup>7</sup> Waiver Requests.

<sup>8</sup> *Id.*

<sup>9</sup> Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless

renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.<sup>10</sup> In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.<sup>11</sup> Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that Danville's late-filed Renewal Applications should be dismissed.<sup>12</sup>

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.<sup>13</sup> In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.<sup>14</sup> Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>15</sup>

Significantly, Danville fails to provide any reason concerning why a waiver grant is warranted under the circumstances presented. It is apparent from the Waiver Requests that Danville's failure to file its license renewal applications in a timely manner was due to its own administrative oversight.<sup>16</sup> As has been previously held, an inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.<sup>17</sup> Further, each licensee is solely responsible for knowing terms of its license and submitting a renewal application to the Commission in a timely manner.<sup>18</sup> Thus, we deny Danville's requests for waivers to permit the late renewal of its licenses and dismiss the applications as untimely filed.

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Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

<sup>10</sup> *Id.* at 11486 ¶ 22.

<sup>11</sup> *Id.* at 11485 ¶ 22.

<sup>12</sup> *See, e.g.*, WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

<sup>13</sup> 47 C.F.R. § 1.949(a).

<sup>14</sup> 47 C.F.R. § 1.955(a)(1).

<sup>15</sup> 47 C.F.R. § 1.925(b)(3).

<sup>16</sup> *See* Waiver Requests.

<sup>17</sup> *See* AlarmNet, Inc., *Letter*, 24 FCC Rcd 11766 (WTB BD 2009); ConocoPhillips Communications Inc., *Letter*, 24 FCC Rcd 11755 (WTB BD 2009); Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11002 ¶ 11 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

<sup>18</sup> *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 n.41 (1991).

City of Danville

If Danville wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.<sup>19</sup> If it needs to continue operating the facilities in the meantime, it can seek special temporary authority (STA) pursuant to Section 1.931 of the Commission's Rules.<sup>20</sup>

Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the requests for waiver of Section 1.949(a) of the Commission's Rules, 47 C.F.R. § 1.949(a), filed by the City of Danville on March 12, 2010 ARE DENIED, and application File Nos. 0004159562, 0004159563, and 0004159564 SHALL BE DISMISSED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

cc: GCS Electronics & Communications  
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<sup>19</sup> See 47 C.F.R. § 101.103.

<sup>20</sup> See 47 C.F.R. § 1.931.